

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

PAUL M. NIGL,

Plaintiff,

v.

Case No. 05-C-223

WARDEN PHIL KINGSTON,

Defendant.

ORDER

On February 25, 2005, this action was commenced by the filing of a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 by pro se petitioner Paul M. Nigl. Nigl had previously been convicted in state court of two counts of homicide by intoxicated use of a motor vehicle and sentenced to a term of sixty years imprisonment. He claimed in his petition that his due process rights were violated because he was denied a motion for a continuance of trial, he was denied effective assistance of counsel, and the blood draws used to determine the extent of his intoxication were illegally obtained. The court denied the petition in a ten page Decision and Order entered on March 17, 2006.

A motion to alter or amend the judgment was denied by order of April 5, 2006 and Nigl thereafter filed a notice of appeal. On May 1, 2006, the court entered an order denying Nigl's request for a certificate of appealability but granting his request for leave to appeal *in forma pauperis*. On August 22, 2006, the Court of Appeals entered an order finding no substantial showing of the denial of a constitutional right and likewise denied Nigl's request for a certificate of appealability.

On January 18, 2011, Nigl filed a motion for relief from the March 20, 2006 judgment denying his petition. On January 19, 2011, the Court dismissed the motion for lack of jurisdiction as a second or successive application for habeas relief in violation of 28 U.S.C. § 2244(b). Nigl has now filed a Notice of Appeal from that order and presently before the Court is his request for a Certificate of Appealability and for leave to appeal *in forma pauperis*. Both are denied.

The Court is satisfied that reasonable courts would not believe there are grounds upon which Nigl would be entitled to relief. Further, the law is so clear that Nigl is not entitled to relief via a motion for relief from a judgment denying a petition for a writ of habeas corpus entered more than five years ago that his appeal cannot be considered in good faith. Accordingly, both his request for a certificate of appealability and his motion for leave to file *in forma pauperis* are denied.

Nigl's letter request for an extension of time in which to file and seek such relief is denied as moot.

Dated this 9th day of February, 2011.

s/ William C. Griesbach
William C. Griesbach
United States District Judge